

AMENDED IN ASSEMBLY MARCH 24, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 439

Introduced by Assembly Member Miller

February 24, 2009

An act to amend Section 671.5 of the Streets and Highways Code, relating to highways.

LEGISLATIVE COUNSEL'S DIGEST

AB 439, as amended, Miller. Encroachment permits.

Under existing law, the Department of Transportation may issue permits authorizing encroachments, as defined, on highways. Existing law requires the department to either approve or deny an application for an encroachment permit within 60 days of receiving a completed application. The department's failure to notify an applicant within that 60-day period that the permit is denied is deemed to constitute approval of the permit. *Existing law allows an applicant to appeal the denial of an application in writing, and requires the department to make a final written determination within 60 days after receipt of an appeal.*

~~This bill would require the department to approve or deny an encroachment permit within 45 days of receiving a completed application~~ *establish different procedures for applications for encroachment permits for major highway projects that cost \$3,000,000 or more and for minor highway projects that cost less than \$3,000,000, and would instead require applications for minor encroachment permits to be approved or denied within a 30-day period. The bill would also require the department to determine whether an application for an encroachment permit is complete, taking into consideration certain factors, and would require the department, within 30 days of receipt of*

an application for a major encroachment permit, or within 15 days of receipt of an application for a minor encroachment permit, to notify the applicant of that determination. The bill would require the department, if an application is determined to be incomplete, to indicate what information or documents are necessary to complete the application, and would specify the procedure for the resubmittal of an application. The bill would also change to 30 days the time period for which the department is required to make a final written determination of an appeal of a denied application. The bill would also require the department to appoint an ombudsperson to receive applications for encroachment permits in each state transportation district, as specified. The bill would make related findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) The California economy is in a recession and has been in a*
4 *recession for a time period in excess of one year.*

5 *(b) In order to assist the California economy to recover from*
6 *the recession, it is advisable to create multiple economic stimuli*
7 *to facilitate the recovery.*

8 *(c) California has previously authorized billions of dollars for*
9 *infrastructure projects that have yet to reach construction. It is*
10 *desirable, therefore, to accelerate project delivery in any and every*
11 *way possible in order to create construction phase jobs to assist*
12 *in fighting the recession.*

13 *(d) One method of accelerating project delivery is to streamline*
14 *the permitting process so that projects may be construction-ready*
15 *at an earlier date. This is particularly true with regard to*
16 *transportation projects.*

17 *(e) For any project on a state highway, the Department of*
18 *Transportation must issue permits authorizing encroachments.*
19 *Such permits are a necessary prerequisite to the construction of*
20 *needed improvements to the state highway system.*

21 *(f) Current law under Section 671.5 of the Streets and Highways*
22 *Code requires that such encroachment permits be issued within*
23 *60 calendar days, under specified terms and circumstances.*

1 (g) *However, in order to facilitate the issuance of encroachments*
2 *in an even faster manner than required under current law, certain*
3 *changes to the encroachment permit statutes are necessary.*

4 (h) *The following changes contained in this act will further*
5 *accelerate project delivery through accelerating and streamlining*
6 *the encroachment permit process for transportation projects on*
7 *state highways.*

8 SEC. 2. *Section 671.5 of the Streets and Highways Code is*
9 *amended to read:*

10 671.5. (a) The department shall either approve or deny an
11 application from an applicant for ~~an~~ *a major* encroachment permit
12 within 60 days of receiving a completed application *and for a*
13 *minor encroachment permit within 30 days of receiving a*
14 *completed application*, as determined by the department. An
15 application for an encroachment permit is complete when all other
16 statutory requirements, including the California Environmental
17 Quality Act (Division 13 (commencing with Section 21000) of
18 the Public Resources Code), have been complied with. *The*
19 *department shall determine whether an application is complete*
20 *by following the procedure in subdivision (b).* The department's
21 failure to notify the applicant within that 60-day *or 30-day* period
22 that the permit is denied shall be deemed to constitute approval of
23 the permit. Thereafter, upon notifying the department, the applicant
24 may act in accordance with its permit application, as if the permit
25 had been approved.

26 ~~(b) If the department denies an application for an encroachment~~
27 ~~permit, it shall, at the time of notifying the applicant of the denial,~~
28 ~~furnish to the applicant a detailed explanation of the reason for the~~
29 ~~denial.~~

30 (b) (1) *A major encroachment permit includes all improvement*
31 *projects where the projected cost of the improvements to the state*
32 *highway equal or exceed three million dollars (\$3,000,000). A*
33 *minor encroachment permit includes all improvement projects*
34 *where the projected cost of the improvements to the state highway*
35 *is less than three million dollars (\$3,000,000).*

36 (2) (A) *When an application is for a major encroachment*
37 *permit, not later than 30 calendar days after the department has*
38 *received an application for an encroachment permit, the*
39 *department shall determine in writing whether the application is*
40 *complete and shall immediately transmit the determination to the*

1 applicant for the encroachment permit. If the written determination
2 is not made within 30 days after receipt of the application, the
3 application shall be deemed complete for purposes of this chapter.
4 If the application is determined not to be complete, the
5 department's determination shall specify those parts of the
6 application that are incomplete and shall indicate the manner in
7 which they can be made complete, including a list and thorough
8 description of the specific information needed to complete the
9 application. The applicant may submit materials to the department
10 in response to the list and description.

11 (B) Not later than 30 calendar days after receipt of the submitted
12 materials, the department shall determine in writing whether they
13 are complete and shall immediately transmit that determination
14 to the applicant. If the written determination is not made within
15 that 30-day period, the application together with the submitted
16 materials shall be deemed complete for purposes of this chapter.

17 (3) (A) When an application is for a minor encroachment
18 permit, not later than 15 calendar days after the department has
19 received an application for an encroachment permit, the
20 department shall determine in writing whether the application is
21 complete and shall immediately transmit the determination to the
22 applicant for the encroachment permit. If the written determination
23 is not made within 15 days after receipt of the application, the
24 application shall be deemed complete for purposes of this chapter.
25 If the application is determined not to be complete, the
26 department's determination shall specify those parts of the
27 application that are incomplete and shall indicate the manner in
28 which they can be made complete, including a list and thorough
29 description of the specific information needed to complete the
30 application. The applicant may submit materials to the department
31 in response to the list and description.

32 (B) Not later than 15 calendar days after receipt of the submitted
33 materials, the department shall determine in writing whether they
34 are complete and shall immediately transmit that determination
35 to the applicant. If the written determination is not made within
36 that 15-day period, the application together with the submitted
37 materials shall be deemed complete for purposes of this chapter.

38 (c) The department shall adopt regulations prescribing
39 procedures for an applicant to appeal to the director for a final
40 determination of the department's denial of an application. The

1 appeal shall be made in writing to the director. There shall be a
2 final written determination by the director within ~~60~~ 30 calendar
3 days after receipt of the applicant's written appeal. The adopted
4 regulations shall require the appellant to pay to the department a
5 fee of not more than 50 percent of the estimated administrative
6 cost to the department of conducting the appeal.

7 ~~(d) Nothing in this section precludes an applicant and the~~
8 ~~department from mutually agreeing to an extension of any time~~
9 ~~limit provided by this section.~~

10 *(d) The department shall appoint or designate an ombudsperson*
11 *to receive applications for encroachment permits in each state*
12 *transportation district in which applications for encroachment*
13 *permits are received. The department may appoint or designate*
14 *one person to be the ombudsperson for multiple districts and may*
15 *appoint or designate the ombudsperson to be located in the*
16 *headquarters office. The department may designate the district*
17 *director to act as the district ombudsperson. The district*
18 *ombudsperson shall coordinate all applications for major and*
19 *minor encroachment permits and ensure compliance with this*
20 *section. The ombudsperson for each district shall offer every*
21 *applicant for a major or minor encroachment permit the*
22 *opportunity for a preapplication meeting with the district*
23 *ombudsperson. The purpose of the meeting shall be to facilitate*
24 *timely application review and approval in accordance with the*
25 *time limits prescribed by this section. The ombudsperson shall*
26 *have the full authority to review, coordinate, and grant or deny*
27 *applications for all encroachment permits and shall have full*
28 *authority to ensure compliance with the time limits prescribed by*
29 *this section.*

30 ~~SECTION 1. Section 671.5 of the Streets and Highways Code~~
31 ~~is amended to read:~~

32 ~~671.5. (a) The department shall either approve or deny an~~
33 ~~application from an applicant for an encroachment permit within~~
34 ~~45 days of receiving a completed application, as determined by~~
35 ~~the department. An application for an encroachment permit is~~
36 ~~complete when all other statutory requirements, including the~~
37 ~~California Environmental Quality Act (Division 13 (commencing~~
38 ~~with Section 21000) of the Public Resources Code), have been~~
39 ~~complied with. The department's failure to notify the applicant~~
40 ~~within that 45-day period that the permit is denied shall be deemed~~

1 to constitute approval of the permit. Thereafter, upon notifying
2 the department, the applicant may act in accordance with its permit
3 application, as if the permit had been approved.

4 (b) If the department denies an application for an encroachment
5 permit, it shall, at the time of notifying the applicant of the denial,
6 furnish to the applicant a detailed explanation of the reason for the
7 denial.

8 (c) The department shall adopt regulations prescribing
9 procedures for an applicant to appeal to the director for a final
10 determination of the department's denial of an application. The
11 appeal shall be made in writing to the director. There shall be a
12 final written determination by the director within 60 calendar days
13 after receipt of the applicant's written appeal. The adopted
14 regulations shall require the appellant to pay to the department a
15 fee of not more than 50 percent of the estimated administrative
16 cost to the department of conducting the appeal.

17 (d) Nothing in this section precludes an applicant and the
18 department from mutually agreeing to an extension of any time
19 limit provided by this section.